Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1976

No. 73, Original

STATE OF CALIFORNIA, PLAINTIFF,

VS.

STATE OF NEVADA, DEFENDANT.

PRELIMINARY REPORT OF SPECIAL MASTER

ROBERT VAN PELT,
Senior U. S. District Judge
Special Master

JOE CHRISTENSEN, INC., 1540 Adams Street, Lincoln, Nebraska

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There has been referred to the Special Master (1) the Motion to file a brief amicus curiae, filed by California State Assemblyman Mike Cullen, and the objections thereto of defendant State of Nevada; (2) the Motion for leave to file amended answer setting forth counterclaim, filed by the State of Nevada, and the opposition thereto of the State of California and Nevada's reply thereto; and (3) the Motion filed by the State of California for leave to file amended complaint. The parties have filed briefs and the matters now stand submitted.

They will be discussed in the order above enumerated.

Early in the proceedings Mr. Cullen sent the Special Master a large sized packet of papers. From a scanning it was evident that documents of an evidentiary nature were being tendered and the Special Master advised Mr. Cullen that he felt he should not examine any documents concerning the boundary dispute until identified as exhibits and offered in evidence. Mr. Cullen also on July 13, 1977 called the Special Master on the telephone and talked to his law clerk and asked to be advised as to the date of hearing.

Mr. Cullen appears to believe that his views as a citizen and a State Legislator are not being represented by the Attorney General of California although in California's tendered amended complaint the alternative relief prayed for may be broad enough to cover Mr. Cullen's position. Your Special Master, without at this time passing on the question of whether the Attorney General will adequately represent Mr. Cullen's interest or position, concludes that there is no serious harm in permitting Mr. Cullen by brief to present his view of the facts and law applicable and therefore recommends that Mike Cullen individually and as a State Legislator be permitted within a time to be fixed hereafter by the Special Master Master to present to the Special Master a brief amicus curiae on any relevant issue in this case.

Your Special Master will, after the evidentiary hearing, report and make a recommendation to the Court as to whether any relevant issues appear as to which the Attorney General of the State of California has been unable or unwilling to provide proper representation.

Motions above numbered 2 and 3 can best be considered together. By the motions and tendered pleadings attached it is evident that each State has factual claims and legal arguments which are not within the issues made by the pleadings thus far filed by order of the Supreme Court.

It seems advantageous to all the parties and to the Court to resolve now and in this action all known disputes between the two States, relevant to a determination of the joint or common boundary of the two States.

The parties are now before the court. It does not presently appear that the granting of either motion will necessitate additional parties.

Your Special Master has previously stated to this Court in *Texas v. Louisiana*, Original 36:

> Courts have long recognized the desirability, as far as possible, of settling all disputes of parties before it rather than allowing piecemeal litigation. The Federal Rules of Civil Procedure refer to the consolidation of trials to avoid unnecessary expense and delay and this Court has long approved consolidation of trials as a matter of convenience and economy in administration.

This statement applies with equal force here.

To allow the proposed pleadings should result in a saving of expense to each litigant, to a saving of time for the Court and to a probable saving of time for counsel for each State and for any Special Master, assuming the likelihood and necessity of such a further appointment, if the motions are denied and cases are filed raising at a later time issues which have not been presented in this case.

The issue of whether or not the proposed counterclaim has legal merit, whether it is a compulsory counterclaim and whether if not filed the doctrine of res judicata applies are all matters that can best be determined after hearing the facts supporting and the facts denying the counterclaim. Time will be saved the parties, the Court and the Special Master in hearing the matter at this time.

Even with the filing of an amended complaint and an amended answer setting forth a counterclaim the matter should progress to where it can be submitted to the Court during its October, 1978 term.

The national interests would also be served by a final settlement in this action of all disputes between the parties. The location of a state's boundary has an effect upon interstate commerce, in that some commerce may be intrastate or interstate depending on the boundary location.

While your Special Master is advised that slightly over 100 years ago shots were fired by citizens of the area affected by the boundary location at other area citizens, he is certain no such danger now exists. It is mentioned only because the citizens of the area are still vitally interested in the outcome of this suit. Your Special Master with, and at the request of, counsel made a very superficial examination of a small part of the area affected. This area, while it extends from a point in Lake Tahoe to the Oregon border, is only a few thousand feet in width at most. Your Special Master finds the Attorneys General, and their staffs, cooperative with each other and with your Special Master in the objective of an early hearing and believes it would best serve the Nation's interest to resolve now in this action all known disputes between these two States affecting the lives, welfare, economics, peace and security of the citizens who now are and will remain neighbors, wherever the boundary is finally determined.

Your Special Master therefore recommends:

1) That Mike Cullen, individually and as a State Legislator, at a time to be determined by the Special Master, be permitted to file with the Special Master a brief amicus curiae.

2) Granting of the Motion of the State of Nevada to file forthwith the tendered Amended Answer setting forth a counterclaim and allowing the State of California 20 days thereafter to reply or answer.

3) Allowing the State of California to file forthwith an Amended Complaint as tendered in and attached to its Motion for leave to file and allowing the State of Nevada 20 days thereafter, if needed, to amend its answer, with 10 days to be granted the State of California to reply if a reply is needed.

Respectfully submitted,

ROBERT VAN PELT
Special Master